

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

SAMUEL SIGOLOFF,

Plaintiff,

v.

No. 4:22-CV-00923-P

LLOYD J. AUSTIN, III, *et al.*,

Defendants.

**OFFICIAL-CAPACITY DEFENDANTS' OPPOSED MOTION
TO STAY DEADLINE TO RESPOND TO PLAINTIFF'S COMPLAINT**

Official-capacity Defendants (“Defendants”) respectfully move the Court to stay their deadline to respond to Plaintiff’s complaint, ECF No. 1, from Monday, December 19, 2022, pending the Court’s decision on Plaintiff’s Motion for Preliminary Injunction, ECF No. 2.¹ Plaintiff opposes this request for a stay, which is supported by good cause as set forth below. Plaintiff does not oppose the alternative motion for an extension of the deadline described in ¶ 7.

1. On November 14, 2022, the Court granted Defendants’ unopposed Motion for an Extension of Time to respond to Plaintiff’s Motion for Preliminary Injunction, requiring that response to be filed by December 9, 2022. On November 29, 2022, the Court also granted Defendants’ Motion to Substitute Counsel. Most recently, on December 9, 2022, following the change in counsel, Defendants filed their opposition to Plaintiff’s Motion for Preliminary Injunction.

2. Between the change in counsel and the time required for newly assigned counsel to

¹ Plaintiff served a copy of the complaint on the United States Attorney for the Northern District of Texas on October 21, 2022. See ECF No. 11 ¶ 1. Under Fed. R. Civ. P. 12(a)(2), Defendants’ Rule 12 deadline to respond to the complaint falls on December 19, 2022.

respond to Plaintiff's preliminary injunction motion, Defendants would need additional time beyond December 19 to prepare an anticipated Rule 12 motion to dismiss.

3. Further, Defendants also intend to file an appropriate venue motion under 28 U.S.C. § 1406(a). Based on their review of the complaint allegations, Defendants are aware of no colorable basis for venue in the Northern District of Texas, and thus intend to move to dismiss and/or transfer this action to an appropriate venue.

4. Staying the deadline for Defendants' Rule 12 response to the complaint would serve the interests of judicial economy and the parties' resources by permitting the parties to focus their efforts on addressing venue questions and allowing the Court sufficient time to consider Defendants' anticipated venue motion.

5. Finally, the Court has before it Plaintiff's preliminary injunction and Defendants' opposition brief, with any reply from Plaintiff presumably forthcoming. Defendant's opposition brief raised multiple case-dispositive issues, including lack of subject-matter jurisdiction, which would provide the Court a basis to dismiss Plaintiff's claims *sua sponte*. Providing the Court additional time to address those issues without the necessity of simultaneous Rule 12 proceedings would also conserve party and judicial resources.

6. For all those reasons, Defendants ask the Court to stay their existing Rule 12 deadline, with any response to the Complaint due 21 days after the latter of the Court's decisions on: (i) Plaintiff's preliminary injunction motion; and (ii) Defendants' anticipated venue motion under 28 U.S.C. § 1406(a) (if the case remains pending before this Court following its decision on the anticipated venue motion).

7. In the alternative, should the Court be disinclined to stay Defendants' Rule 12 response deadline for these reasons, Defendants respectfully request an extension of that deadline from December 19, 2022 to Monday, January 9, 2023, for the reasons described in ¶ 2, above.

Plaintiff does not oppose such an extension.

A proposed order staying the deadline to respond to Plaintiff's complaint is attached. As an alternative, a proposed order extending the deadline is also attached.

DATED: December 16, 2022

Respectfully submitted,

BRIAN M. BOYNTON
Principal Deputy Assistant Attorney General
Civil Division

CHRISTOPHER R. HALL
Assistant Branch Director

/s/ Kevin K. Bell

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Counsel for Official-Capacity Defendants

CERTIFICATE OF SERVICE

On December 16, 2022, I electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all parties electronically or by another manner authorized by Fed. R. Civ. P. 5(b)(2).

/s/ Kevin K. Bell

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CERTIFICATE OF CONFERENCE

On December 15, 2022, I conferred electronically with Sean C. Timmons, counsel for plaintiff. The motion for stay is opposed. The alternative motion to extend the deadline to respond to the Complaint is unopposed.

/s/ Kevin K. Bell

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Civil Action No. 4:22-cv-00923-P

PROPOSED ORDER 1

Upon consideration of Defendants' Opposed Motion to Stay Deadline to Respond to Plaintiff's Complaint, the Court hereby **GRANTS** the motion. This order **STAYS** Defendants' deadline to respond to the Complaint. Any answer will be due 21 days after the latter of the Court's decisions on: (i) Plaintiff's preliminary injunction motion; and (ii) Defendants' anticipated venue motion under 28 U.S.C. § 1406(a) (if the case remains pending before this Court following its decision on the anticipated venue motion).

SO ORDERED on this ____ day of _____.

Mark T. Pittman
United States District Judge

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PROPOSED ORDER 2

Upon consideration of Defendants' Unopposed Motion to Extend the Deadline to Respond to Plaintiff's Complaint, the Court hereby **GRANTS** the motion. Any answer to Plaintiff's Complaint will be due on January 9, 2023.

SO ORDERED on this ____ day of _____.

Mark T. Pittman
United States District Judge